

COMMENTS ON OU-1 AND OU-2

Libby Asbestos Site


1154096 - R8 SDMS

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Libby Asbestos Site
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I am presenting these comments to the Proposed Plans for OU-1 and OU-2 at the Libby Asbestos Site as an individual who is a member of Ted Linnerts' "Vocal Minority" which attempted to protect human health in Libby for the past 10 years by holding EPA's feet to the fire on scientific issues. Libby is the site of more documented death and disease than any site in EPA history because decisions relating to the spread of Libby Amphibole have been politically driven since at least the 1980's, not science based as required by CERCLA and other laws. The Proposed Plans for OU-1 and OU-2 expose this weakness in that they are shallow in content, flawed in scope and do not address scientific issues to protect human health such as Remedial Action Levels and Quantitative cleanup goals. Records of Decision and supporting documents for these Operable Units should be summarily scrapped until EPA commits to science-based support of the documents required by CERCLA for either full or partial deletion.

The EPA has to ensure that they have actually closed pathways of exposure in OU-1 and OU-2:

Region 8 Director Bill Murray has stated in writing that the exposure pathways caused by erosion in the boatramp at OU-1 when contractors left the wet well pump on have been closed. This statement is made even though visible vermiculite remains in the boatramp after Environmental Resource Specialist (ERS) actions. While visible vermiculite may not necessarily mean Libby Amphibole is present, this statement was made without ANY testing of the soil or ABS testing. Mr. Murray has followed in the footsteps of Christie Todd Whitman and made statements without scientific support that caused individuals to be exposed to Libby Amphibole asbestos. The NY Southern District Court held that Ms. Whitman could be sued individually for putting people in harms way. We need to ensure that the decision makers in this issue are held accountable when they attempt to minimize a threat they have not clearly defined.

We know that soil testing using PLM is not the best available science for detection of Libby Amphibole. The best available science dictates that soil must be disturbed and the air tested in the disturbed areas. Activity based sampling (ABS), using the best analytical tools available, is necessary to protect human health in the public park at OU-1 and private property at OU-2. This testing must be extensive and specific to the future use as a public park and private uses. Testing must be specific to Libby Amphibole mineral fibers, not vermiculite, chrysotile or any of the other substances EPA uses to confuse the issue. Libby Amphibole is the Contaminant of Concern in Libby. Any fibers found after the remedy is in place would constitute failure of the remedy since we have no toxicity studies and cannot define protection of human health. Our public park has to be clean as every square inch of this property will be a specific use area, designed for use by children. Visible vermiculite left at the surface after removal or remedial action is unacceptable. Libby Amphibole identified through ABS is unacceptable in any level, even one single fiber, without toxicity information. Using standards associated with Removal actions to justify Remedial actions is a dangerous move that will come back on the citizens of Libby. In much the same vein as the Grace indictments, moving ahead without a Quantitative Risk Assessment and other applicable required scientific standards is an effort to further deceive the people using this public park about the hazardous nature of Libby Amphibole. EPA representatives responsible for this malfeasance should be prosecuted under the Clean Air Act as "knowing endangerment" for the exposures allowed over the last ten years.

The City of Libby must be kept apprised of design progress and allowed to participate at OU-1.

EPA withdrew from discussions with the City of Libby from 2003 until 2009 because of political concerns. The announcement of the Record of Decision process was made at CAG and TAG meetings a full month before the City was notified because of this disconnect. There has been a concerted effort by EPA to keep the City Council, and thus the public, in the dark on progress at OU-1. The people of Libby should be allowed to participate in the final design and remedy for OU-1. I respectfully request design reviews at 30-60-90 percent completion and ample time for public comment at every phase, taking into consideration future use of the park. The actions of EPA and the City of Libby must be transparent and include public participation from this point going forward.

The remedy put in place on this public park must be durable and effective at OU-1 and in the private property at OU-2:

EPA has stifled any discussion concerning contaminant transport by insects and animals. Ants and other insects, worms, rodents and other burrowing creatures will be bringing contaminant to the surface on this site. The Owners of OU-1 and OU-2 should not have to pay for mitigation of this threat to the cap just because EPA was allowed to avoid the issue in a faulty design. Without toxicity numbers on the contaminant involved, and with the sites being used as a

public park and for private use, EPA should be required to test the integrity of their caps every year and take measures to protect the caps at their expense if their design failed to address threats such as this. ABS sampling during the dry periods of every summer should be required until further investigations and toxicity assessments warrant lesser protection of human health. This concept will transfer to such issues as the final cover used in the boatramps, rip-rap used in areas prone to erosion, and roots of trees and shrubs used in the sites' restoration. EPA has to prove their remedy is protective of human health, and unknown toxicity requires this be assessed every year to prove durability. Failures in the remedy forced on the Owners before toxicity was determined, and the associated health care issues caused by this failure, should be a liability EPA accepts in perpetuity now that EPA policy Director Helen Dawson has admitted that they have proceeded with ten years of work based on faulty scientific methods and cannot prove they have done their job.

Restoration issues on OU-1 must be resolved before the design is allowed to proceed:

The RI/FS states that OU-1 is "undeveloped". This is only undeveloped because EPA ordered the destruction of \$2 million worth of infrastructure on this site. Allegations have arisen stating that EPA officials entered into secret negotiations with local civic leaders which resulted in private profiteering at the expense of public restoration of this property. The process must be halted until final resolution of this matter to protect the rights of the people of Libby relative to legal redress of this issue. Restoration compensation must be included in any actions going forward on this property. This issue was addressed in comments to listing on the NPL and the comments were ignored. By ignoring the issue at the outset of the Project, EPA has become complicit in the long term problems that arise when profiteering is allowed to fester on a Superfund site. EPA has allowed cross contamination of the site and first responders building in an effort to avoid scrutiny of the details of their dealings with local politicians. This in turn has endangered human health in this public park and first responders base operations. Nothing could be further from EPAs' stated mission in Libby. Restoration can only come through a thorough investigation of the actions that disrupted the City's ability to receive restoration and affected EPA's ability to move forward with sound science. Political influence has neutered the voice of this community in comments coming from the various political entities. Personal concerns of the politically connected have taken precedence over protection of human health through this manipulation of the political process in the watered down comments coming out of the City and County. This will result in continuing exposures, increased medical and health care costs, and O&M measures including Institutional Controls designed to pass the costs on to the average citizen.

A forensic audit of the expenditures on OU-1 is necessary before the people of Libby can make the decisions they have to make:

The City of Libby has absolutely no documentation of the work that was performed on our property. EPA refuses to release the pertinent documents in their possession. The City of Libby should receive a forensic audit of the expenditures of private and public money on the OU-1 project, including work on then-Mayor Bergets' private property by both Grace and EPA. This will clarify the issues by identifying where the money went. Then the people of Libby can determine if profiteering affected the quality of the cleanup of OU-1 and protection of human health.

Before Mayor Berget got involved in the issue of restoration, EPA OSC Paul Peronard stated that we would have everything we have now except the contamination, including all of our infrastructure. Mr. Peronard argued against a cap because of Institutional Controls and O&M measures. After Mayor Bergets personal involvement with WR Grace, all of the City's infrastructure was destroyed without restoration and the City was forced to accept a cap. A forensic audit, coupled with the appraisal required by the Work Plan, would identify whether or not the Mayors alleged profiteering came at the expense of the health and welfare of the people of Libby.

There must be a multi-tiered comment process.

When this issue came to public comment on the reclamation bond in 1999, comments were made that asbestos laden rocks had been hauled out of the mine and used in area creek banks for stabilization. These were public comments to a public hearing and we were assured that our comments would be heard and that we had the ability to affect the outcome of the action. This comment yielded a response stating that any asbestos on those rocks had washed away years previous, there was no scientific substance to the response. It was pure lip service which left those rocks in the creeks.

Seven years later, EPA identified those rocks as almost pure asbestos. They tried to claim they didn't know where the rocks came from but the public comments identified that they should have been acknowledged at the outset of the Project. They did admit that kids had been using them to build dams in the creeks.

My comments for listing on the NPL were summarily dismissed in like manner and should have corrected this mess we're in today. We should be allowed to view EPAs' responses to our comments and have a certain time period to correct any flaws in those responses before the remedial action is initiated.

Special Agent Corey Rumples request for a review by the Office of Program Evaluations should come before our rights to legal remedy are stripped from us.

Special Agent Rumble asked that our concerns be evaluated by a Program Review. There is such a huge disconnect between Administration and the scientists that we are constantly getting conflicting data on issues of protection of human health. Dr. Helen Dawson recently

told this community that Libby is not safe based on current information. EPA sent a team of thugs around town to bully any media representative who dared to report Dr. Dawson's claims as stated. We have repeatedly been told by the Team on the ground in Libby that Libby is safe. The scientific advisors at EPA refuse to quote that mantra. The science of this fibers' effects on the human body are not being translated to Region 8 administrators. We cannot be forced to move to a ROD based on flawed science and a refusal to acknowledge the body of evidence that refutes the documents. Science must come before politics.

A quantitative risk assessment is necessary to protect human health.

A qualitative risk assessment on the site with the most documented disease and death in the history of EPA is a slap in the face to the people of Libby. It does nothing to protect human health which is a requirement for moving to Remedial Action. A qualitative risk assessment is an effort to conceal and misrepresent the hazardous nature of Libby Amphibole. This would constitute "knowing endangerment" under the law as we saw in the case against Grace executives. EPA will be breaking the very laws they unsuccessfully prosecuted and should be prosecuted themselves for this unconscionable behavior.

Soil used for restoration from the Boothman Pit was determined to be contaminated with Libby Amphibole and should be replaced at OU-1 with clean material and OU-2 if used there.

Mike Crill delivered a documentary to the CAG which showed activities in the Boothman Pit which created huge dust plumes while mining for reclamation soil for OU-1 among others. This pit is downstream from the minesite. EPA has argued that LA has migrated in water borne erosion for eons, thus spreading this contaminant along the Kootenai River. EPA admitted that they only tested the top material that was stripped before mining began in the Boothman pit and remains on site as cover (Top 6 inches). The Boothman Pit is just a short ways downriver from Rainy Creek. Sampling was never done on every 3000 cubic yards extracted from this pit. The limited sampling that was done used outdated technology (PLM). Activity Based Sampling will show that this material suspends high concentrations of LA when disturbed. All topsoil generated from the Boothman Pit and used on OU-1 should be rejected, hauled away and replaced with clean material identified as clean using the best available science.

The boatramp washout of Spring 2009 is never addressed in any of the Documents in an attempt to leave it out of the scope of comments

The engineered cap as a containment program has proven to be a huge failure at OU-1. Not a year has gone by without a breach of this cap. On 6-26-09 this cap was breached once again. ERS Hotline Request #3585 details the shoddy fashion in which these environmental releases are remediated on OU-1. This incident not addressed in the RI/FS because of political

considerations taken above considerations of human health. The documentation is so shallow and unsubstantial that Director of Region 8 Bill Murray is convinced that the pathways to exposure caused by this breach have been closed. There is visible vermiculite in this boatramp after the ERS action. People are dragging their boats through this visible vermiculite. EPA should do some ABS testing to determine if disturbing this visible vermiculite releases any LA fibers to the environment before they make sweeping statements about closure of pathways of exposure. (See my first comment.) This also exposes the fact that the State and Federal fish and wildlife agencies have been left out of the discussion.

Testing at OU-1 has created cross contamination that threatens everyone using the public park.

EPA Rep Mike Cirian admitted in a Libby City Council meeting that 1200 holes drilled in OU-1 for testing purposes in the Fall of 2007 brought Libby Amphibole to the surface and created cross contamination issues that have never been addressed by EPA. My letter to EPA rep Rebecca Thomas asked her to address these holes and the cross contamination. Her reply in a letter dated Sept 3, 2009 stated plainly that she would not address my concerns but she invited me to participate in O&M measures that will force the people of Libby to pay for this mess.

OU-8 has the potential to re-contaminate every Operable Unit cleaned up to date and should be addressed before any other Operable Unit.

OU-1 and OU-2 have both been re-contaminated by the Contractors refusal to adhere to the Work Plan. Visible vermiculite along Hwy 37 comes from the Contractors trucks hauling the material in contradiction to the Work Plan. The Work Plan says the tarps on those trucks which have hauled over half a million cubic yards of waste along the Hwy 37 corridor should be secured in a manner which prevents the release of fibers. EPA oversight has ignored this pathway of exposure in this sensitized community for years, resulting in increased exposures on this sensitized community along the Highways and in the Contractors own working yard. The results of this inaction are that OU-8 had to be added nine years into the project without any public participation. OU-8 intersects with virtually every other Operable Unit in the Site and contamination on OU-8 has the potential to re-contaminate the entire project. Oversight must be re-evaluated on this Project to close these gaps in protection of human health.

In summary, EPA has not done their job in Libby, has attempted to deceive the people of Libby, and has put politics ahead of protection of human health. There is much more work to be done before EPA can move to Remedial Action.

Thank you for your consideration in this important matter.

Sincerely, DC Orr

A handwritten signature in black ink, appearing to be "DC Orr", with a long horizontal line extending to the right.